

## Chapter 7

## Table of Contents

Table of Contents .....	1
Complaint Investigations .....	2
Receipt of Complaints .....	2
Complaint Letter Received in Region .....	2
Complaint Letter Received in Headquarters .....	3
Complaint Letter Received in Other Region .....	3
Telephone or Verbal Complaints .....	3
Handling of Complaints Concerning Intimidation and Harassment of the Railroad Accident Reporting Rule .....	3
Handling of Complaints Concerning Decertification Cases Under Investigation by the LERB .....	3
Handling of Complaints Concerning Occupational Safety and Health (OS & H) Issues .....	4
Follow-up Complaints .....	4
Duplicate Complaint Handling .....	4
Congressional Complaints Received in Headquarters .....	4
Congressional Correspondence Addressed to Regional Offices .....	4
Inside Addresses/Congressional Salutations – in Washington .....	5
Inside Addresses/Congressional Salutations – away from Washington .....	5
Sample Letter .....	6
Controlled Complaints .....	6
Headquarters Involvement .....	6
Regional Complaint Numbers .....	6
Listing of Type Codes and Descriptions .....	7
Complaint Investigations - General Procedures .....	8
Confidentiality .....	8
Divulging Information .....	8
Conducting Interviews .....	8
Documentation .....	9
On-Site Inspection .....	9
Determining Merits .....	9
Thoroughness in Investigating .....	10
Completion of Complaint Investigation Report .....	10
Memoranda of Complaint Investigation .....	10

## Chapter 7

# Complaint Investigations

FRA receives inquiries and complaints covering a wide range of issues from a variety of sources from within the rail industry as well as from the general public. The major source of inquiries and/or complaints originates from the employees of individual railroad companies, or from their labor representatives. These inquiries or complaints are received either in the form of a written letter, telephonically, or verbally in the presence of the FRA representative. The issues involved may concern both areas for which FRA has statutory or regulatory enforcement authority, or for which this agency does not have any enforcement authority. The following guidance is provided to allow the agency to properly respond to inquiries and complaints received.

When receiving inquiries or complaints for which we do not have regulations, it is still the responsibility of FRA to actively progress those issues that may have an impact upon railroad safety. These should be progressed either through the Complaint Procedure, or through the SACP process if one is currently in effect on that railroad.

For those areas that do not impact railroad safety, we should assist the person to the extent possible by providing information concerning the proper governmental agency (if any) or other entities that would have jurisdiction over the non-railroad safety related issue.

## Receipt of Complaints

Each region is responsible for handling complaints from start to finish: logging-in, assigning numbers, acknowledging, investigating, closing out, and keeping the file. Headquarters will serve as a technical resource for interpretations and will stand by to assist as appropriate.

## Complaint Letter Received in Region

When a complaint is received in the region, it will be generally processed and handled as follows:

1. Complaint will be categorized and logged in and a number assigned (e.g., an hours of service complaint is received in Region 8: H97-MRL-80001). The related information is also entered in the complaint database (FACTS) and continues active until closed out.
2. An acknowledgment letter should be promptly forwarded to the complainant over signature of regional administrator. (An example of an acknowledgment letter is shown in this chapter.)
3. The complaint will be assigned to an inspector for investigation.
4. After the investigation has been completed, a closeout letter will be prepared to the complainant over the signature of the Regional Administrator. (An example of a closeout letter is shown in this chapter.)
5. The file will be maintained in the region. There is no need to forward anything to headquarters unless the Regional Administrator or Specialist believes the issue is one that headquarters staff needs to be aware (e.g., something appropriate for a technical bulletin, something germane to a rulemaking or special study such as train makeup, etc.).

6. If a complaint letter is received by an inspector in a field office, he/she must forward it to the regional office for handling.

## **Complaint Letter Received in Headquarters**

When a complaint letter is received in headquarters, it will be faxed/forwarded to the appropriate region for handling as noted above. For alleged violations involving more than one region (such as a train crew going on duty in one region and exceeding its statutory hours of duty limitations in another region) the complaint will be assigned to the region where the alleged violation (excess service) occurred.

## **Complaint Letter Received in Other Region**

When a complaint letter is received in a region other than the one in which the incident occurred, the letter will be faxed/forwarded to the appropriate region for handling as noted above.

## **Telephone or Verbal Complaints**

Complainants who bring their complaint to the attention of an inspector are to be encouraged to submit it in writing to the Regional Administrator. If, given the circumstances, it is in your best judgment to accept the oral complaint, do so; never refuse. As per existing policy, if a telephone complaint is received within the applicable region, it will be investigated during an inspector's next visit to the area (unless a critical rail safety issue is apparent). When telephone complaints are received in headquarters, a message will be taken and then forwarded to the affected region for handling as noted above.

## **Handling of Complaints Concerning Intimidation and Harassment of the Railroad Accident Reporting Rule**

Telephone or verbal inquiries concerning alleged intimidation and harassment of the Railroad Accident Reporting regulation should be handled by encouraging the complainant to first seek remedy provided for within the railroad's internal control plan. If the complainant insists on an FRA investigation, the complainant should be encouraged to submit it in writing to the Regional Administrator.

## **Handling of Complaints Concerning Decertification Cases Under Investigation by the LERB**

The Operating Practices Specialist should screen requests for complaint investigations involving engineer certification/decertification cases that have been sent (or have the potential to be sent) to the Locomotive Engineer Review Board (LERB). The proper course of action is to file a petition with FRA, requesting the LERB to review the railroad's decertification decision. The petition requirements are outlined under Section 240.403.

If such a complaint involves additional allegations of noncompliance with other Federal safety regulations, the OP Specialist should separate the decertification issues from engineer certification/revocation issues so the issues regarding other regulations can be investigated.

## **Handling of Complaints Concerning Occupational Safety and Health (OS & H) Issues**

When complaints concerning OS & H issues for which FRA does not currently have regulations are received at the regional level, the investigation should not commence until headquarters is contacted for guidance. This is important for three reasons:

1. Based on the nature of the complaint, a predetermined procedural process may have to be implemented in headquarters that involves a review of the complaint by the legal staff.
2. This review by legal may result in the forwarding of the complaint to OSHA for handling or a recommendation for a joint or parallel investigation by OSHA and FRA personnel. The review and recommendation from legal will generally be made within 5 working days. Headquarters will then provide notification to the appropriate region on the disposition of the complaint.
3. Committing FRA personnel to investigate a complaint that may ultimately be forwarded to OSHA for handling is a waste of resources and time.

## **Follow-up Complaints**

If a follow-up letter is received expressing dissatisfaction with a field investigation finding, the affected region, in conjunction with headquarters staff, will handle follow-up action and response.

## **Duplicate Complaint Handling**

Occasionally complainants forward similar or identical complaint letters to multiple agency representatives. Inspectors and Specialists should regularly discuss complaint investigation status, especially when an inspector has been assigned several complaints at one time to avoid duplication of effort. Multiple identical complaints should be handled as a single investigation.

## **Congressional Complaints Received in Headquarters**

For congressional correspondence received in headquarters requiring field investigation, the letter will be acknowledged by the headquarters staff, then a copy of the file faxed to the appropriate Regional Administrator and handled as follows:

1. The matter will be afforded priority over other complaints.
2. At the conclusion of the investigation, the Regional Administrator will forward the file, along with a draft closeout letter to the respective Staff Director involved. The letter will be finalized in headquarters and mailed with a copy returned to the Regional Administrator's file.

## **Congressional Correspondence Addressed to Regional Offices**

This is to establish uniform procedures for the handling of congressional mail addressed to regional offices.

1. Within 2 days of receipt, the Regional Administrator is to write and transmit an interim response following the format in the attached sample letter.

2. The Regional Administrator should then initiate an investigation and request a complaint number from the Office of Safety Assurance and Compliance in Washington.
3. On the date that the interim letter is signed, the Regional Administrator is to send a copy of the congressional letter and the interim reply to the Executive Secretariat (ROA-20), via overnight mail, for assignment of a correspondence control number.
4. The Executive Secretariat will assign a control number and forward the correspondence package to the Office of Safety Assurance and Compliance for appropriate assignment in headquarters. A copy of the control number cover sheet will be sent to the Regional Administrator.
5. When the investigation is complete, the file will be transmitted to Washington. Headquarters will prepare the closeout letter for the Administrator or by the signature of the Associate Administrator for Safety. Headquarters will send the Regional Administrator a copy of the closeout letter.

### **Inside Addresses/Congressional Salutations – in Washington**

The Honorable Trent Lott

United States Senate

Washington, D.C. 20510

Dear Senator Lott:

The Honorable Mary C. Jones

U.S. House of Representatives

Washington, D.C. 20515

Dear Congresswoman Jones:

The Honorable John B. Smith

U.S. House of Representatives

Washington, D.C. 20515

Dear Congressman Smith:

### **Inside Addresses/Congressional Salutations – away from Washington**

The Honorable Trent Lott

United States Senator

3100 South Pascagoula Street

Pascagoula, Missouri 39501

Dear Senator Lott:

The Honorable John B. Smith

Member, U.S. House of Representatives

123 Main Street

Pittsburgh, Pennsylvania 12345

Dear Congressman Smith:

## Sample Letter

The Honorable Mary C. Jones  
Member, U.S. House of Representatives  
123 High Street  
Richmond, Virginia 23456

Dear Congresswoman Jones:

Thank you for your (Month and Day) letter on behalf of (Person's name and title if appropriate) of (Name of City/Town, State). (Mr., Mrs., or Ms.) (Last name only) is concerned about

\_\_\_\_\_.  
The Federal Railroad Administration (FRA) enforces regulations covering railroad operating practices, including those covering [Fill in pertinent issue]. I have assigned regional inspection personnel to investigate (Mr., Mrs., or Ms.) (Last name only)'s concerns. When the investigation is complete, the FRA's Washington, Headquarters office will provide you with a final report.

I appreciate your interest in this matter.

Sincerely,

Regional Administrator

## Controlled Complaints

All complaints assigned "control numbers" will be handled as noted above (i.e., "congressionals received in headquarters").

## Headquarters Involvement

Headquarters staff will serve as a resource for regional staff. Each specialist should contact his or her headquarters counterpart when interpretive issues arise. However, all inquiries for formal written interpretations will continue to be handled by headquarters staff.

## Regional Complaint Numbers

Complaints are numbered on a sequential basis per calendar year, assigned by type and railroad. In keeping with this approach, each region will be assigned a unique series of 5-digit numbers as follows:

Region	Number Series
1	10000-19999
2	20000-29999

Region	Number Series
3	30000-39999
4	40000-49999
5	50000-59999
6	60000-69999
7	70000-79999
8	80000-89999

### **Listing of Type Codes and Descriptions**

Type Code	Subject
A	Alcohol and Drug
AI	Accident/Incident Report
B	Bridge
BS	Blue Signal Protection
C	Communication
D	Dormitory
EQ	Employee Qualification
EF	Employee Fatigue
ET	End of Train Device
G	Safety Glazing Standards
H	Hours of Service (HS)
HD	HS Deadhead Transportation
HA	HS Alcohol and Drug Testing
K	Equipment
L	Locomotive and Train (include noise)
M	OSHA Mining
N	Signal
O	OSHA

P	Personal Injury
PB	Power Brakes and Drawbars
R	Operating Rules
RM	Rear End Marker
RX	Grade Crossing
S	Safety Appliances
TM	Train Make Up
T	Track
U	Unclassified
Z	Hazardous Materials

## Complaint Investigations - General Procedures

Generally, complaints are filed by employees, labor organizations, and the general public.

### Confidentiality

The inspector assigned to a complaint investigation normally knows the identity of the complainant and has the names of potentially helpful contacts. An inspector must not, under any circumstances, reveal the identity of a complainant to anyone outside of FRA, unless the complainant authorizes such disclosure in writing (by signing a Statement of Witness document), the disclosure is to the Department of Justice in the course of related litigation, or such disclosure is required by a court of competent jurisdiction (as determined by consultation with counsel for FRA). See Section 5 of the Rail Safety Improvement Act of 1988, 45 U.S.C. Section 441(f).

This same confidentiality protection afforded to a complainant extends to other involved train crewmembers.

### Divulging Information

An inspector assigned to investigate an Operating Practices complaint must determine the facts of the case, report the findings, and provide an analysis. When possible, this is done without revealing to any person that a complaint is or was under investigation.

### Conducting Interviews

When beginning an investigation of an Operating Practices complaint, the inspector should first interview the complainant, if known, to obtain detailed information about the circumstances involved in the complaint. The inspector should then interview any person who has information pertaining to the complaint. An example of a Report of Interview is included in this chapter.



Interviews should be conducted in private when possible. The inspector must include a comprehensive report of every interview conducted when the investigation report is submitted. The inspector may also submit a written statement signed by the complainant. Such signed statement will be necessary if a violation report is being submitted and the violation cannot be proven from the inspector's firsthand knowledge. In this event, the statement must be on FRA's Statement of Witness form, which indicates that the complainant has authorized the use of the statement in an enforcement proceeding and will testify if necessary.

## **Documentation**

The inspector should first become familiar with the case and then examine pertinent records or other documents maintained by the railroad, to determine if they support the allegations made by the complainant. The inspector should use good judgment when contacting employees during the course of the investigation. Unless authorized, the inspector must not give any information, records, data, etc., about the complaint to anyone outside of FRA.

Any items obtained during a complaint investigation should be marked to identify where each was obtained and who has the original documents. Photos obtained during a complaint investigation should be posted on a sheet of paper with a brief description of the photo and its significance. In the report, this page should be indexed to the complaint number.

## **On-Site Inspection**

When a complaint involves Operating Practices issues at a particular place or location, the inspector should visit the scene to observe or determine exactly what took place there with respect to matters referred to in the complaint (as applicable).

## **Determining Merits**

After conducting appropriate interviews and examining pertinent records, the inspector should be able to determine whether the complaint is bona fide. If the investigation of a complaint reveals a violation of the Federal regulations, the inspector is required to exercise good judgment in determining the best method for obtaining compliance in accordance with the guidelines discussed in Chapter 4 (Determining When and What Enforcement Action is Necessary), that is:

the inherent seriousness of the condition or action;

the kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation;

any actual harm to persons or property already caused by the condition or action;

the offending person's general level of current compliance as revealed by the inspection as a whole;

the person's recent history of compliance with the relevant set of regulations, especially at the specific location or division of the railroad involved.

The inspector may handle the situation directly with appropriate representatives of the railroad and if approved, submit a violation report for prosecution. In either case, the violation must be brought to the attention of the appropriate person for corrective action without identifying the complainant(s), except

where the complainant has signed a witness statement authorizing the use of his/her statement in an enforcement proceeding.

If corrective action is going to be handled directly with the railroad representative(s), the inspector should do this promptly and describe in the investigation report what corrective action was taken by that representative. If the person does not agree to take the required corrective action, the inspector should submit a violation report. If a violation report is submitted, the inspector must document it in accordance with instructions provided in Chapter 5.

## Thoroughness in Investigating

All inspectors are reminded of their grave responsibilities in thoroughly investigating complaints the first time. Job pressures and commitments must not interfere with the investigation even if it is thought that the investigation is taking an inordinate amount of time.

## Completion of Complaint Investigation Report

After receipt of a complaint investigation assignment, the inspector must complete the investigation within the generally assigned completion period: 30 days for Congressional complaints and 60 days for all others.

After completing an investigation, the inspector should promptly submit a comprehensive report of the investigation, carefully review the report to ensure its completeness and appropriateness and then forward the report to his/her Specialist. The Specialist is responsible for the accuracy, completeness, timeliness, and appropriateness of a complaint investigation report.

If in the course of the complaint investigation, the inspector determines that non-compliance with a Federal safety law or regulation, or with a railroad operating or safety rule has occurred, a completed copy of the inspector's Inspection Report (Form F6180.96), documenting the violation or deficiency must be submitted with the completed complaint investigation report.

The violation report, if any, and/or physical evidence which supports the findings, should be prepared and forwarded as directed in Chapter 5.

## Memoranda of Complaint Investigation

Complaint investigations will be completed by an inspector and reported on a memorandum format with the complaint number in the upper right-hand corner.

**Complaint Closeout Letter:** The Regional Specialist will complete a complaint closeout letter, which will indicate whether a violation was recommended or the corrective action taken, as applicable. The complaint closeout letter will be signed by the Regional Administrator.

The office of Chief Counsel has recommended the following verbiage be used in customer correspondence relating to penalties.

Our findings have been forwarded to the Office of Chief Counsel with a recommendation for the assessment of civil penalties.

**The following are examples of a Complaint Investigation Memorandum, Report of Interview, Regional Complaint Closeout Letter, and Regional Complaint Acknowledgment Letter:**

**Memorandum**

U.S. Department  
of Transportation  
Federal Railroad  
Administration

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**Date:** March 26, 1997 **Reply to Attn. of:** H97-BN-80021

**Subject:** Complaint Investigation  
Burlington Northern Santa Fe Railway (BNSF)

**From:** Deborah Spurgeon, OP Inspector

**To:** Dick Clairmont, Regional Administrator, Region 8  
Vancouver, Washington

The Complaint: A letter dated February 27, 1997, was received from Mr. Thomas Pendleton, Local Chairman 1637, United Transportation Union (UTU). In his letter, Mr. Pendleton alleges that on January 27, 1997, crewmembers of BNSF Train 01-664-26 were required by BNSF's train dispatcher to violate the hours of service laws. This alleged violation occurred on BNSF's Oregon Division, Wishram Subdivision, at Milepost 225, near Finley, Washington.

They stated that on January 26, 1997, they were called on duty in Vancouver, Washington, at 1550 hours, on Train 01-664-26. The train departed Vancouver at 1830 hours and proceeded eastbound to Milepost 195, arriving at 0005 hours, January 27, 1997. They stated that locomotive BN 2822 ran out of fuel at that point. They also stated they were able to depart this location and they proceeded east to Milepost 225. At Milepost 225, another locomotive in the engine consist, BN 3552, also ran out of fuel and the leading locomotive, BN 2179 would not load. They stated that the train could no longer proceed.

The train dispatcher was notified of the situation at 0215 hours. The train dispatcher advised the engineer that eastbound Train BN 8150, a following train, would shove Train 01-664-26 in the clear at the next siding. The engineer stated he then called the terminal manager at Pasco, Washington (his point of final release) to seek an alternative solution to his dilemma. The engineer said the manager could not offer any assistance. At 0200, BNSF's train dispatcher communicated, via radio, that they were advised to violate.

The Investigation: On March 6, 1997, the engineer and conductor were contacted concerning this matter. Based on the investigation, Federal Railroad Administration concluded that the train crew violated the Hours of Service Laws (HSL) in order to complete its assignment. At 0350 hours, January 27, 1997, the crew expired on their hours of service. Train BN 8150 East arrived and shoved Train 01-664-26 to Hover, Washington, siding. Train 01-664-26 arrived at Hover Siding at 0420 hours, and the crew secured the train at 0440 hours, and was released from duty. The crew was then transported to Pasco, their point of final release.

Conclusion: The conductor and engineer of BNSF Train 01-664-26 were required to violate the (HSL), as instructed by BNSF's train dispatcher on January 27, 1997. This excess service was reported by the railroad on the Hours of Service Report-Railroads (FRA Form F6180.3).

Contact: Mr. Pendleton, Local Chairman 1637, UTU, was contacted and advised of our findings on March 20, 1997. Mr. Pendleton stated he was pleased with the results of our investigation.

Action Taken: The region's findings have been forwarded to the Office of Chief Counsel with a recommendation for the assessment of civil penalties.

Attachments can include one or more of the following:

1. Copy of complainant's letter
2. Copy of Reports of Interview of conductor and engineer of Train 01-664-26
3. Copy of BNSF hours of duty record for conductor and engineer of Train 01-664-26
4. Copy of Hours of Service Report-Railroads (FRA Form F6180.3)
5. Copy of BNSF Delay Report for Train 01-664-26
6. Copy of "Inspection Report"

**The following is an example of a complaint investigation Report of Interview:**

Report of Interview

Person Interviewed:	Fred Brown Manager of Operating Practices Parkville and Eastern Railroad Company (PERC) 2801 Rosecrans Drive Kansas City, Missouri 64117
Date of Interview:	Tuesday, April 5, 1997
Place of Interview:	By telephone to Mr. Brown's office from the FRA office in Des Moines, Iowa
Interview Conducted by:	John P. Jones Operating Practices Inspector Des Moines, Iowa
Others Present:	None

Mr. Brown was contacted by telephone this date to develop his knowledge concerning the case of Mr. Curtis Richards, (former Parkville and Eastern Railroad Company Locomotive Engineer), who alleged he had been intimidated, harassed, and ultimately discharged from the railroad as a result of an on-duty personal injury he had sustained on December 20, 1993.

Mr. Brown stated that as he recalled this case, Mr. Richards had been discharged from the railroad for his failure to comply with written instructions. He said that if he recalled correctly, Mr. Richards had failed to provide former Kansas City Terminal Superintendent Mr. Russell Wade with information from his doctor that would allow him to stay off work. Mr. Brown said that Mr. Richards has a litigation case against the company; an FELA case due to an on-duty injury, and that it is expected this case would go to trial before the end of the year.

When asked if Mr. Richards had been discharged for his failure to attend a rules class, Mr. Brown emphatically indicated that he did not say that. I pointed out to Mr. Brown that correspondence in my possession indicated Mr. Richards was accorded a formal investigation for his failure to show up at a rules class. Mr. Brown said his discharge had nothing to do with his failure to attend a rules class. He said that Mr. Richards had been notified to attend a rules class in advance of his returning to work. He said that Mr. Richards had asked him for a rule book, which indicated to Mr. Brown that Mr. Richards was

going to attend a rules class. He said that Mr. Richards did not attend a rules class, and that Mr. Brown did not communicate with him anymore.

Mr. Brown said that Mr. Richards was a former Clarinda and College Springs Railroad Company engineer, having hired out in July 1978. Mr. Brown said that the computer screen that he was referencing indicates that he became a fireman in October 1978. As such, Mr. Brown said that Mr. Richards would come under the Brotherhood of Locomotive Engineer collective bargaining agreement with the former Clarinda and College Springs Railroad. He said that his recollection of the terms of that agreement is that when engineers are off injured, they are to periodically provide the Company with medical advise from their treating physician.

Mr. Brown said Mr. Richards was assessed a Level 2 under PERC's "Discipline Policy" on April 19, 1996, for violation of Rule 1.13 (failure to comply with instructions) of the General Code of Operating Rules, and, that this current violation plus his current discipline status resulted in a Level 3 under the "progressive discipline table." Then, on May 17, 1996, Mr. Richards was again assessed a Level 2 for violation of Rule 1.13 (failure to comply with instructions) of the General Code of Operating Rules, and that this current violation plus his current discipline status resulted in a Level 5 (permanent dismissal) under the "progressive discipline table."

**The following is a sample regional complaint closeout letter:**

June 18, 1997

E97-BE-50231

Mr. Marvin B. Jones, Jr.  
Legislative Representative  
United Transportation Union  
1612 University Avenue  
Dallas, Texas 73162

Dear Mr. Jones:

This is in further reference to your March 12, 1997, letter addressed to Director, Office of Safety Assurance and Compliance in Washington, D.C., regarding the operations of a plant railroad at the American Petroleum and Refining Company (APRCO) refinery, which involved operation of the plant railroad's crews and equipment on trackage owned by the Bartlesville and Eastern Railroad Company (BE) in Fruitland, Texas.

The Federal Railroad Administration (FRA) has completed its investigation of the allegations contained in your letter. Our investigation found the allegations to be essentially correct. APRCO has contracted with XYZ Switching Services to operate a plant railroad switch engine within its plant. Because the lead track from the BE main track into the plant did not have the capacity to hold more than nine cars clear of the main track, BE crews were required to leave deliveries of 20 or more cars per day on the BE main track and plant lead track. The plant railroad and the BE allowed the plant railroad crew to enter and operate on BE main track to pull the cars into the plant. Furthermore, we found that the plant railroad crew is not qualified on the operating rules of the host railroad, and the plant railroad engineer is not certified by the BE railroad.

Both the plant railroad and BE managers were advised by FRA that even this limited intrusion into BE main track was not consistent with FRA safety standards, and that the plant railroad would either have to come into compliance with all crew qualification requirements and locomotive safety standards or stop the practice of entering BE main track. The two railroads elected to stop the practice of pulling deliveries into the plant from BE's main track, and to arrange some other method of interchange. The plant railroad manager indicated that he intends to qualify the plant railroad crew on BE rules and certify the locomotive engineer to operate on BE trackage in order to be in compliance if business necessitates the crew's operation on BE trackage in the future.

We will continue to monitor the plant railroad's operations for compliance. Please advise this office if you have any further information about this subject. Thank you for your continued interest in rail safety.

Sincerely,

Regional Administrator

**The following is a sample regional complaint acknowledgment letter:**

April 4, 1997

E97-BE-50231

Mr. Marvin B. Jones, Jr.  
Legislative Representative  
United Transportation Union  
1612 University Avenue  
Dallas, Texas 73162

Dear Mr. Jones:

This acknowledges receipt of your March 12, 1997, letter addressed to Director, Office of Safety Assurance and Compliance in Washington, D.C., regarding the operations of a plant railroad at the American Smelting and Refining Company (ASARCO) refinery, which may involve operation of the plant railroad's crews and equipment on trackage owned by the Bartlesville and Eastern Railroad Company (BE) in Fruitland, Texas.

The Federal Railroad Administration will investigate the allegations contained in your letter, and you will be advised of the results of our investigation. Please refer to the file number above on any future correspondence regarding this matter.

Thank you for your interest in this matter.

Sincerely,

Regional Administrator